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No. 80-2096

In the Supreme Court of the United States

APRIL TERM, 1981

GLEN DERONDE,

Petitioner,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and RONELL L. GORDON, DEAN OF ADMISSIONS, UNIVERSITY OF CALIFORNIA, DAVIS DAVIS SCHOOL OF LAW,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

Respondents' Brief in Opposition

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QUESTIONS PRESENTED

1. In a case seeking admission to law school does petitioner present a justiciable controversy where he would have been denied admission in the absence of the assertedly discriminatory admissions criteria, and has already graduated from law school elsewhere?

2. Should *University of California Regents v. Bakke*, 438 U.S. 265 (1978) be reconsidered; if so, is this moot case brought more than three years prior to the *Bakke* decision an appropriate vehicle for such reconsideration?

3. Did the California Supreme Court properly decide that the Davis Law School's admissions program served the interests of diversity and was not unconstitutional as applied?

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Respondents' Brief in Opposition

Respondents, The Regents of the University of California and Ronell L. Gordon, Dean of Admissions, University of California, Davis, Davis School of Law, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the California Supreme Court's opinion in this case entered on February 11, 1981 (Petition for Rehearing denied by Order of March 11, 1981).

OPINION BELOW

The opinion of the Supreme Court of the State of California in this matter is reported as *DeRonde v. Regents of University of California*, 28 Cal.3d 875, 625 P.2d 220 (1981). It is reprinted as Appendix "A" to the Petition.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: ". . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Proceedings

Petitioner, DeRonde, filed suit in the Superior Court of Yolo County, California, on July 17, 1975. He claimed discrimination against him as an applicant to the School of Law at the University of California, Davis because the school used ethnic minority status as one factor in making admissions decisions. He sought only an order for his admission, requesting that the defendants be compelled "to admit Plaintiff to said law school," that defendants be enjoined "from denying Plaintiff admission to said law school" and that it be declared that defendants "are lawfully obligated to admit Plaintiff to said law school." (C.T. Vol. I, p. 4.)[1] He did not attempt to bring his suit as a class action, as a taxpayer's suit or in any other representative capacity.

The case was tried on August 19, 1975. At trial, DeRonde testified that he had decided to attend law school at the University of San Diego. (R.T. p. 17.) He did enroll at the University of San Diego Law School, graduated in 1978,

1. All record references are to the Clerk's and Reporter's Transcripts filed in the California Supreme Court.

has since passed the Bar, and appears before this Court as an attorney on the petition.[2]

On February 5, 1976, the trial court filed its memorandum of intended decision finding that DeRonde's qualifications were so relatively weak that he would not have been admitted even if the law school had not used ethnic minority status in making admissions decisions. (C.T. Vol. I, p. 168.) Nevertheless, on December 6, 1976, following issuance of the California Supreme Court's *Bakke* decision (*Bakke v. Regents of University of California*, 18 Cal.3d 34, 132 Cal.Rptr. 680, 553 P.2d 1152 (1976)), the trial court entered judgment enjoining the University from utilizing any admissions criteria based upon race or ethnic origin. (C.T. Vol. II, p. 69.)

The University appealed the trial court's judgment to the District Court of Appeal which automatically stayed its effect. The appeals court then issued an order holding all proceedings on the appeal in abeyance pending this court's disposition of the *Bakke* case. After this Court's June 28, 1978 *Bakke* decision (*University of California Regents v. Bakke*, 438 U.S. 265 (1978)) the instant case was briefed and argued before the Court of Appeal. And on January 21, 1980, the appeals court issued its opinion acknowledging the case was moot but reaching the merits under California's "great public importance" exception to the mootness doctrine. The appeals court decision would have found the law school's admissions program lawful under the federal Constitution as construed by this Court in *Bakke*. It, however, would have affirmed the trial court injunction on the basis

2. Because these facts occurred following trial there are no record citations. A declaration of the registrar at the University of San Diego confirming DeRonde's graduation was filed with the California Court of Appeal.

that the California Supreme Court's *Bakke* decision was trolling as a matter of state equal protection doctrine.[3]

Before the decision of the Court of Appeal became final, the California Supreme Court issued its decision in *Price v. Civil Service Com.*, 26 Cal.3d 257, 161 Cal.Rptr. 475, 604 P.2d 1365 (1980), holding that affirmative action programs lawful under federal *Bakke* are also lawful under California equal protection principles. Nevertheless, the appellate court, in the face of the University's Petition for Rehearing, persisted in issuing its opinion. The California Supreme Court then granted a hearing, thereby vacating the Court of Appeal opinion.

On February 11, 1980, the California Supreme Court issued its opinion, also acknowledging the case was moot, but reaching the constitutional issues "because of the substantial cloud of uncertainty over the University's multiple and widely used procedures;" an uncertainty which was created by the Court of Appeal decision. (28 Cal.3d 875, Petition, App. "A", p. 3.) The California Supreme Court confirmed that the admission program was lawful under federal equal protection principles enunciated in *Bakke,* and that such programs are also lawful under the state Constitution.

The Law School's Admissions Program

In brief, the law school's admissions committee bases decisions to accept or reject applicants on a number of factors in addition to grades and test scores: growth, maturity, and commitment to law study as shown by prior employment, extracurricular and community activities, advanced degrees or studies, personal statements and recom-

3. The California *Bakke* decision was based solely on the federal Constitution and did not mention the state equal protection clause.

mendations; factors which, while no longer present, have affected previous academic grades, such as temporary physical handicaps or disruptive changes in school or environment; wide discrepancies between grades and test scores where there is indicated evidence of substantial ability and motivation; rigor of undergraduate studies; economic disadvantage; and ethnic minority status contributing to diversity. (C.T. Vol. I, pp. 60-70.) The law school's admissions program is summarized in the California Supreme Court's opinion. (28 Cal.3d 875, Petition, App. "A" pp. 4-7.)

The admissions program has no quotas or goals. As might be expected under such a program, the numbers of minorities have fluctuated from year to year: In 1975, the year DeRonde applied, 32.6 percent of the class were minorities; in 1976, 20.3 percent; 1977, 25.9 percent; 1978, 17.5 percent; 1979, 26.69 percent; 1980, 23.26 percent. In the years since the law school was founded in 1966, 24.85 percent of the entering freshmen have been minorities, a figure well below the percentage of minorities in the state's population.[4]

ARGUMENT

1. Petitioner's Graduation from Law School Makes This Case Moot.

This action was brought solely to compel DeRonde's admission to law school. Since he graduated from law school three years ago, the action is moot.[5]

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4. These figures were unavailable at the time of trial and were furnished by the Dean of the Davis Law School for use at oral argument before the California Supreme Court.

5. Both the California Court of Appeal and the California Supreme Court agreed the case was moot, but reached the merits under the "great public interest" exception to the mootness doctrine

This Court declined to decide the similar case of *DeFunis v. Odegaard,* 416 U.S. 312 (1974) because Mr. DeFunis had been admitted to the final term of the final year of law school, holding:

> "The controversy between the parties has thus clearly ceased to be 'definite and concrete' and no longer 'touch[es] the legal relations of parties having adverse legal interests.' " (416 U.S. 312, 317, quoting from *Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227 (1937); see, also, *Roe v. Wade,* 410 U.S. 113, 125 (1973).)

Mootness is even more clearly evident here where petitioner is nearly three years beyond law school and is a practicing attorney.

Mootness is not avoided by any claim for money damages. DeRonde states that his action was brought for injunctive relief and to recover damages. (Petition, p. 5) In fact, his complaint sought *only* an order of admission. (C.T. Vol. I, pp. 1-4.) At the close of trial DeRonde did seek to amend his complaint to include a claim for damages. (C.T. Vol. I, p. 129.) DeRonde failed to submit a proposed written amendment with his motion as required by California law and his motion was denied for this reason as well as because it was not timely. (C.T. Vol. I, p. 168.) The denial of the motion to amend to state a claim for damages was affirmed on appeal. (28 Cal.3d 875; Petition, App. "A", p. 27.) Thus, the only claim ever raised by this case was for an order of admission to the Davis Law

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under California law. State exceptions to mootness, however, are immaterial to a claim of mootness before this Court which "is a federal one which a federal court must resolve before it assumes jurisdiction." (*DeFunis v. Odegaard,* 416 U.S. 312, 316; *North Carolina v. Rice,* 404 U.S. 244 (1971).) In any event, the question of great public importance in California was the question of whether the state Constitution established a different standard than the federal *Bakke* decision, an issue now settled and not before this Court.

School. That claim was probably moot at the time of trial when Mr. DeRonde announced his intention to go to law school elsewhere; it has certainly been rendered moot by his graduation from law school three years ago.

2. There Is Also No Justiciable Controversy Because No Injury To Petitioner Can Be Redressed by Resolution of His Claim.

A plaintiff does not state a controversy justiciable before this court unless he has " 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." (*Warth v. Seldin*, 422 U.S. 490, 498-499 (1975), quoting from *Baker v. Carr*, 369 U.S. 186, 204 (1962).) There is no personal stake unless plaintiff demonstrates that the injury to himself is "likely to be redressed by a favorable decision." (*Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976); *Warth v. Seldin, supra*, at 498.)

DeRonde sued only as a disappointed applicant. Since he decided to attend law school elsewhere, and has since graduated, a finding that the law school admissions program was constitutionally defective would redress no injury to him.

Moreover, the trial court expressly found that "Plaintiff [DeRonde] would not have been admitted to the law school even if the special admissions program had not been in operation and that, therefore, the denial of his application was not as a result of the special admissions program wherein mitigating factors to low indices were considered for ethnic minorities." (C.T. Vol. I, p. 168.) Thus, even if petitioner had maintained a case or controversy by claiming injury which could be redressed, consideration of the claim would be foreclosed here because the admissions criteria

he challenged resulted in no injury to him. (*Arlington Heights v. Metro. Housing Corp.*, 429 U.S. 252 (1977).) In *Arlington Heights*, plaintiffs challenged a zoning decision by the village of Arlington Heights on equal protection grounds. In language equally applicable here, this court reasoned that where "the same decision would have resulted even had the impermissible purpose not been considered," complainant "no longer fairly could attribute the injury complained of to improper consideration of a discriminatory purpose" and "[i]n such circumstances, there would be no justification for judicial interference with the challenged decision." (429 U.S. 252, 271 n. 21 (1977); see also, *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274, 287 (1977); 438 U.S. 265, 279-280 (1978), Op. of Powell, J.: *Henson v. University of Arkansas*, 519 F.2d 576, 577-578 (8th Cir. 1975).)

3. There Is No Occasion for Reexamining This Court's Decision in Bakke.

A. THE ONLY FEDERAL ISSUE WHICH MIGHT BE REVIEWED IS THE EQUAL PROTECTION ISSUE ALREADY ADDRESSED IN BAKKE.

Petitioner claims that federal questions are presented under 42 U.S.C., § 1981, 42 U.S.C., § 1983, and 42 U.S.C., § 2000(e) [sic] as well as under the equal protection provisions of the Fourteenth Amendment.

In fact, however, DeRonde's complaint sought only an order for his admission under the equal protection clauses of the state and federal Constitutions and under Title VI of the Civil Rights Act of 1964 (42 U.S.C., § 2000d). (C.T. Vol. I, pp. 1-4.)

The announced intended decision of the trial court, its findings of fact and conclusions of law, and its judgment are based solely upon state and federal equal protection. (Decision: C.T. Vol. I, pp. 167-173; findings and conclusions: C.T. Vol. II, p. 64-68; judgment: C.T. Vol. II, p. 69.)

DeRonde made no attempt before the trial court to revive the Title VI issue asserted in his complaint and the issue was not addressed on appeal.

Sections 1981 and 1983 are not mentioned in the complaint. The record does disclose one passing reference to these statutes: DeRonde's memorandum of points and authorities in support of his unsuccessful motion to amend his complaint for damages asserted, irrelevantly, that claims for damages may be made pursuant to these statutes. (C.T. Vol. I, pp. 130-132.) But DeRonde never stated a claim under sections 1981 or 1983, these statutes were not addressed by any lower courts, and they present no issue for review.

Thus, assuming there was a case or controversy, it would involve the same question previously reviewed in *Bakke:* Whether the equal protection clause of the Fourteenth Amendment bars any and all consideration of race in making admissions decisions to highly selective graduate and professional schools.

B. BAKKE APPROPRIATELY DETERMINES THE EQUAL PROTECTION ISSUE PRESENTED.

University of California Regents v. Bakke, supra, provided institutions of higher education with needed and sufficient legal guidance regarding race-conscious admissions programs. For example, following the *Bakke* decision, the President of the University of California issued "Guidelines on Fair and Equal Opportunities to Participate in Undergraduate and Graduate Programs" with reference to the implications of *Bakke.* These guidelines are attached to this brief as Appendix "A". We call to the Court's particular attention the materials having to do with graduate admissions including that appearing under the headings "General Criteria and Evaluation" (pp. 4-5), "Diversity of the Student Body" (pp. 5-6), and "Procedures" (p. 6).

At the University of California with its five medical schools, three law schools and various other highly selective professional and graduate programs where race is considered as a factor in admissions, there have been no *Bakke*-type cases filed since the issuance of this Court's decision in *Bakke*. The national experience is in accord. To our knowledge there has been only one *Bakke*-type case since the issuance of the *Bakke* decision. It was an action brought by a rejected applicant to the School of Medicine of the University of Washington. The trial court and the Supreme Court of Washington found the admissions program valid under the rule of *Bakke*. (*McDonald v. Hogness*, 92 Wn. 431, 598 P. 2d 707; cert den., ... U.S. ....., 64 L.Ed.2d 238 (1980).)

The *Bakke* decision has served well the interests of higher education and of society in general. The instant case, brought and tried three years prior to this Court's decision in *Bakke*, presents no occasion for reexamining it.

4. The California Supreme Court Properly Found the Admissions Program to be Lawful Under Bakke.

A. PETITIONER'S CLAIM THAT THE DAVIS LAW SCHOOL ADMISSIONS PROGRAM IS INVALID FOR ITS FAILURE TO ALLOW FOR THE COMPETITIVE CONSIDERATION OF ALL RACES IS WITHOUT MERIT.

Petitioner appears to claim that *Bakke* requires a race-attentive admissions program to give affirmative consideration to applicants of all races and that the Davis law school program is infirm because it identifies five racial or ethnic minority groups for affirmative consideration (Petition, pp. 29-34).

If petitioner's argument is that racial and ethnic diversity is the only diversity sought, he misconceives the program. As stated in the school's application bulletin for 1975-76, the year DeRonde applied:

> "The Admissions Committee is seeking law students of demonstrated academic ability, as evidenced by LSAT scores and the undergraduate grade-point average (GPA). However, with 3,000 applications projected for the 1975 entering class of 175, the Admissions Committee will be looking beyond the LSAT and GPA for special qualities in its applicants. The committee is seeking law students of diverse backgrounds, taking into consideration economic factors, advanced degrees or other advanced studies, significant work experience, and extracurricular and community activities during and after college years. The growth and maturity of the applicants and their commitment to law study are major concerns." (C.T. Vol. I, p. 93.)

And,

> "The students and faculty of the UC Davis School of Law recognize the desperate need for minority lawyers. The school, therefore, actively solicits applications from Asian, Black, Chicano, Native American and Filipino students interested in coming to King Hall." (C.T. Vol. I, p. 96.)

As observed by the California Supreme Court, "This grouping [Asians, blacks, Chicanos, native Americans and Filipinos] generally corresponds to the ethnic categories defined by the federal Equal Employment Opportunity Commission in its public reports." (28 Cal.3d 875, 881, App. "A", p. 5.) Although these groups were identified as those contributing to diversity on the basis of "ethnic minority status," the diversity sought by the school was more general: an applicant of any race could be assigned a plus for his or her contribution to diversity of the class based upon the applicant's particular background, irrespective of race or ethnicity.

If petitioner's argument is that a race-attentive admissions program must give "special" consideration to applicants of all races, it falls of its own weight. To give "special" consideration to all on the basis of race is to give special consideration to none.

In any event, race-attentive affirmative action programs by their nature focus on members of identified underrepresented groups. That a program is limited to such groups is not a basis for invalidity. (*Fullilove v. Klutznick*, ... U.S. ....., 65 L.Ed.2d 902 (1980).)

B. THE DAVIS LAW SCHOOL ADMISSIONS PROGRAM IS VALID AS APPLIED.

DeRonde asserts that the Davis law school admissions program is invalid as applied. We are uncertain what is meant by this argument, but the Davis law school admissions program is clearly valid under this Court's decision in *Bakke*. The program is designed to promote diversity. Race is only one of many factors considered—others being work experience, breadth of activities, commitment to the law, evidence of overcoming handicaps and maturity. The program involves no set-aside of places or quota. There is a single admissions committee and a unitary process under which all applicants are eligible to compete for all places in the class. It would be difficult to imagine an admissions program—at least one devised before the *Bakke* decision—more closely resembling that of Harvard College which was held up as a model of constitutional race-conscious admission programs in *Bakke*.

Nor can there be any serious question as to the bona fides of the administration of the program. As observed by Justice Richardson writing for the California Supreme Court:

"The record before us is barren of any evidence showing that the University was deliberately using the challenged admissions procedure either as a 'cover' for a quota system or as a means of systematic exclusion of, or discrimination against, white male applicants such as DeRonde. The trial court made no such finding. Without proof of such an intent, the University's procedures must be upheld against a claim of unlawful racial discrimination even if accompanied by some evidence of a disproportionate impact. [Citations.]

"Moreover, the evidence fails to support a finding of such disproportionate impact." (28 Cal.3d 875, 887-888.)

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Appendix A

Office of the President
June 12, 1979

UNIVERSITY OF CALIFORNIA GUIDELINES ON FAIR AND EQUAL OPPORTUNITIES TO PARTICIPATE IN UNDERGRADUATE AND GRADUATE PROGRAMS

If the American promise of equality for all is to be fully realized, barriers to equal opportunity must be attacked wherever they continue to stand. In no area of American life is the removal of remaining barriers more crucial than in education. Because education is the principal channel to the mainstream of society in America, educational opportunity must be equally available to all.

Soon after becoming President, I emphasized the University's commitment to this principle in the following statement:

> We are determined to provide new opportunities for members of groups who have been underrepresented in higher education, both because it is right and because the entire society ultimately benefits from the fullest possible realization of individual potential.

The University of California has historically pursued a policy of nondiscrimination in all of its operations. Experience has proven that this policy, while essential, is not alone sufficient to assure that all individuals will have an equal opportunity to participate in the University's undergraduate and graduate programs. Experience has also demonstrated the effectiveness of affirmative action efforts by the University as a whole and by campuses and academic units to extend educational opportunity to groups which

have been underrepresented at various levels of higher education. The largest of these groups are ethnic minorities and women. The University also recognizes the needs of those who have been educationally disadvantaged because of physical handicap, or economic status.

Participation in undergraduate programs, and eventually in graduate programs as well, may be limited by inadequate pre-college academic preparation or by lack of motivation or encouragement to seek out such opportunities. The crucial long-term step in providing greater participation by groups now underrepresented in these programs is to assure that more students from these groups receive better academic preparation early in their schooling and more encouragement to view higher education as a realistic possibility. The University of California is committed to continuing its active and cooperative role in that broad effort.

Currently there are students seeking admission to the University's undergraduate and graduate programs whose prior educational experience as members of underrepresented groups has placed them at a disadvantage in terms of quantitatively measured academic achievement. Some of these students clearly have the potential to participate successfully in these programs, to their own benefit, to that of their fellow students, and to the benefit of society as a whole. Special forms of University assistance are both necessary and appropriate for these students.

Society's ultimate objective must be to reach the point where special efforts to encourage the enrollment of any particular groups of students are no longer necessary. But the day when all students have equal access to pre-college educational opportunities is not yet here, and the University cannot simply await its arrival. Nor can society

afford to lose the potential contributions of present generations of students who could succeed in their undergraduate and graduate studies if given some encouragement and assistance by the University.

Accordingly, I am establishing the following University *Guidelines,* which draw upon provisions of the California Master Plan for Higher Education, current legal decisions and their interpretation, experience here and at other institutions, and recommendations and suggestions from the University of California community.

I. *Purpose*

These University *Guidelines* are intended to provide guidance and encouragement for vigorous and concerned efforts throughout the University to assure fair and equal opportunity to participate in both undergraduate and graduate programs, and so to increase the enrollments of groups now underrepresented at some University levels, including ethnic minorities, women, and the physically handicapped.

II. *Outreach and Recruitment*

A. *Pre-college level*

At the pre-college level, elementary and secondary schools have primary responsibility for preparing students for higher education, but the University recognizes an important measure of responsibility for cooperative activities in several areas:

1. Professional training of elementary and secondary teachers—The University should continue to provide and promote training which imparts teaching skills and also sensitivity to the learning problems and the abilities and potential of students of diverse cultural backgrounds.

2. Assistance with special learning problems—The University should continue and expand its cooperative programs with secondary schools to overcome learning problems that affect students' preparation for higher education, including writing and mathematics skills.
3. Outreach programs—The University should continue and expand its outreach programs, including summer programs on University campuses and programs in the State's high schools and junior high schools to encourage students from underrepresented groups to consider entering higher education and to take the necessary courses to improve their eligibility for higher education.

B. *Undergraduate level*

1. The University should continue and expand its outreach programs in the State's community colleges to encourage students from underrepresented groups to continue their education to completion of the bachelor's degree.
2. The University should continue and expand its efforts to encourage undergraduate students from underrepresented groups to consider entering graduate studies. The University should seek to identify undergraduates at the University, in the California State University and Colleges system, and in other institutions who show potential for graduate work, inform them of opportunities, and assist them to apply to graduate programs.

III. *Admissions*

A. *Undergraduate*

1. The California Master Plan for Higher Education provides that the University of California shall admit to its undergraduate studies the top 12½ per-

cent of the State's high school graduates. The University establishes systemwide undergraduate admissions requirements which are designed to allow that proportion of the State's high school graduates to qualify for admission. Admissions requirements, recommended by the Academic Senate and adopted by The Regents, are based upon completion of required courses, grade point averages, and aptitude and achievement test scores.

2. The University recognizes that these primarily quantitative data may not accurately measure the potential of some students for university-level work. Accordingly, The Regents provide for admitting a percentage of first-time freshmen (currently 6 percent) and of advanced standing students (currently 4 percent) each year as exceptions to the regular admissions requirements.

3. The University should continue to study and refine its admissions practices and follow the performance records of students, both those admitted under the regular requirements and as exceptions to these requirements, in order to improve its ability to identify applicants with potential for university-level undergraduate studies.

B. *Graduate*

The Regents have delegated to the Academic Senate, subject to Regental approval, the responsibility for determining conditions for admissions. Although requirements for undergraduate admissions and minimal standards for graduate admissions apply systemwide, graduate and professional admissions and requirements are to a large degree determined by campus Graduate Councils and faculties of academic departments and professional schools. Major responsibility for recommending which applicants are selected for admission rests with the faculty of each graduate or professional program.

Lack of postgraduate educational opportunity may be an insurmountable barrier to many careers. Despite innate ability or experience, which in some other areas may partially compensate for inadequate education, the absence of formal postgraduate academic or professional education can absolutely debar an individual from important career areas and from related opportunities for service and leadership. And it deprives American society of the unique contributions that individual might otherwise make to his or her chosen career field and to broader areas of service and leadership.

At the same time that postgraduate instruction is an essential portal, its availability may be limited in at least some fields by factors of cost, perceived social need, or lack of appropriate faculty or facilities.

Accordingly, it is of the utmost importance that opportunities for postgraduate academic and professional education be made available on a fair and equal basis to all.

1. *General criteria and evaluation*

   a. The primary general criterion should be the applicant's potential to complete the program successfully.

      In a program where places are available for all qualified applicants, satisfaction of this primary general criterion and of whatever additional campuswide or departmental criteria a campus Graduate Council or the faculty of a program may elect to apply should be sufficient for admission.

      Grades and test scores alone are not necessarily accurate predictors of potential to complete a program successfully. Grades and test scores serve best as predictors of academic success at the lower and upper ends of their ranges. Between those ends, grades and test scores need to be interpreted in the light of other evidence of potential. Accordingly:

(1) Lower and upper limits for grades and test scores may be established, below and above which applicants may be rejected as unqualified or deemed potentially able to complete the program successfully on the basis of grades and test scores alone. Care should be taken to set these limits at levels where consideration of other evidence of potential would be unlikely to change the outcome, particularly at the lower limit which would automatically eliminate some applicants from further consideration.

(2) For all applicants whose grades and test scores fall between the above limits, those quantitative data should be interpreted in the light of other evidence of potential to complete the program successfully, including further evidence of motivation and persistence, information about employment during student years, and other information which may indicate a potential to overcome the handicap of prior educational disadvantage. Because of barriers and obstacles often associated with race, sex, and physical handicap, status as a member of such an underrepresented group may be regarded as indicative of the need for special scrutiny to determine whether the record accurately reflects the applicant's academic potential.

b. In programs where the total number of fully qualified applicants (those with the potential to complete the program successfully) exceeds the number of available places, final selection of applicants for admission from among those qualified should be based upon two additional general criteria:

(1) The applicant's probable future contribution to his or her intended academic or professional field.

(2) The applicant's probable contributions to the educational enrichment of the program.

Academic and professional fields need a variety of talents and abilities. One need common to most fields is outstanding intellectual ability. From among the group of fully qualified applicants, therefore, some applicants may be selected for admission on the basis of their high grade points and test scores. Other qualified applicants should be selected for admission on the basis of their academic potential in combination with other talents and characteristics important to the particular field, such as leadership, creativity, human relations skills, or demonstrated interest in and commitment to community service.

A class composed of some students with outstanding intellectual ability and some with a variety of other important talents and characteristics will enrich the educational experience of all of the students in the program.

c. For purposes of evaluation in accordance with these criteria, applicants should be requested to submit grade records, test scores, and other pertinent information broadly descriptive of their background, abilities, and potential. Such information may vary from one program to another but might include a personal statement, letters of recommendation, and information on employment, extracurricular student activities, and community service. The school or department may also request a personal interview. (Requests for information beyond grade records and test scores may be delayed until determination has been made that the applicants' grade points and test scores are above the lower limit established for the program.)

2. *Diversity of the student body*

In view of the needs of the field and the program, an appropriately diversified student body should be an important and explicit goal of the admissions process.

a. In programs where places are available for all qualified applicants, the composition of the pool of qualified applicants may in some cases unduly limit the diversity of the student body. In those programs, vigorous efforts should be made to attract a more broadly diversified applicant pool.

b. In programs where the number of qualified applicants exceeds the number of available places, the selection of qualified applicants for admission should be designed to achieve a student body with a diversity of talents and characteristics appropriate to the needs of the field and the educational enrichment of the program. Sex and ethnic minority status may be taken into account where appropriate in establishing such diversity.

   Even in programs where there are large numbers of applicants, further efforts to attract a more broadly diversified applicant pool may be necessary in order to achieve the appropriate degree of diversity in the student body.

3. *Procedures*

Admissions procedures for professional schools may differ substantially from those for academic departments, and procedures for programs with places for all qualified applicants may differ from those with limited places and large numbers of applicants. In all cases, the following should be observed:

a. Procedures should be designed and administered to be fair to all applicants.

b. Procedures should be publicized and criteria for admissions should be specified in documents available to all applicants and others who are interested.

c. Where minimal levels for grades and test scores are to be employed, either the levels to be used or (if that cannot be determined in advance) the levels used in the prior year or years should be cited in the admissions documents.

d. When selection from among a number of qualified applicants for a limited number of places must be made, decisions should be made on the basis of a comparative assessment of applicants.

IV. *Student Support Services*

The offer of admission and its acceptance should constitute an understanding between the student and the University that each will strive to assure the student's academic success. To that end, and within the limitations of available resources, the University should offer financial aid, counseling, academic assistance, and other support services. These services should be available to both undergraduate and graduate students.

V. *Student Affirmative Action Plans*

The University has already adopted a *Student Affirmative Action Plan for Undergraduates* (May 1978) and is now preparing a parallel plan for graduate students. These plans point out barriers which still limit equal educational opportunity for some students and set forth proposals for further ways in which the University can help to eliminate these barriers. The University should continue to carry out these plans, revising the plans as experience may prove desirable.

VI. *Evaluation of Progress*

In order to be able to evaluate its progress toward greater equality of educational opportunity, to identify problems, and to improve the effectiveness of its affirmative action efforts, the University should systematically collect relevant data on admissions, support services, student performance, and subsequent career paths.

VII. *Recognition of Faculty Contributions*

The effectiveness of these *Guidelines* depends heavily upon the assistance of the University's faculty. Outreach programs, admissions, and student support services all require faculty time, thought, and creativity. These should be appropriately recognized as contributions to university service for faculty members being considered for appointment, promotion, or merit salary increases.

David S. Saxon
President